

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADVANCEME, INC.

Plaintiff,

v.

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AMERIMERCHANT LLC,
FIRST FUNDS LLC

Defendant.

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CIVIL ACTION NO. 6:06-CV-082 LED-JDL

**DECLARATION OF GRAHAM E. SUTLIFF IN SUPPORT OF FIRST FUNDS, LLC'S
RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS**

I, Graham E. Sutliff, declare and state as follows:

1. I am over the age of 18 years, of sound mind and am competent to make this declaration. I am an attorney with the law firm of Vinson & Elkins LLP representing First Funds, LLC in this case. The facts stated herein are of my personal knowledge, and I know them to be true and correct.

2. During the weeks of July 23 and July 30, counsel for First Funds had numerous meetings and communications with First Funds regarding the organization of the upcoming production.

3. I had a conversation with Michael Edelman on the evening of August 3. During my conversation, I told Mr. Edelman that I did not know the exact number of filing cabinets being made available for inspection with respect to First Funds upcoming hard copy document production. I told him that I did not know the exact number of documents that would be produced. I told him that the documents being made available for inspection were responsive to the Order. I told him that the documents would be produced on August 7, 2007. I promised to

follow-up with him on the next business day to provide him estimates for the numbers that he requested.

4. On August 3, 2007, I had numerous meetings and communication with an outside vendor to discuss the possibility of engaging that vendor for the production of First Funds' electronically stored information ("ESI"). On August 5, that vendor provided me with a cost estimate for that production. The estimate was \$410,629.00.

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5. On August 5, 2007, I flew from Austin, Texas to New York to help finalize First Funds' hard copy document production. I flew back to Austin, Texas, on August 8, 2007. During my time in New York, I searched First Funds' filing cabinets on numerous occasions. Based on my searches, I was able to determine that 21 filing cabinets contained either documents that were not responsive to the Court's Order or duplicative documents. As a result of my searches, I informed Plaintiff's counsel that these filing cabinets would not be made available for inspection.

6. On August 6, 2007, I met with a third party vendor in an effort to provide Plaintiff's counsel with a cost estimate for copying charges (and other costs) associated with the hard copy document production. That vendor estimated that the cost would be approximately \$121,800.00. I met with a second vendor on August 7, 2007 for the same purpose. That vendor estimated that the cost would be approximately \$140,070.00. I informed Plaintiff's counsel of these estimated costs.

7. On August 6, 2007, Jennifer Williams (V&E Litigation Support Project Manager) contacted two additional third party vendors to discuss the possibility of engaging those vendors for the production of First Funds' ESI. Those vendors provided Ms. Williams with cost

estimates for the production. One cost estimate was \$1,090,000.00. The other cost estimate was \$509,000.00.

8. From August 3 to August 14, I participated in at least 10 meetings with individuals associated with First Funds' IT department to discuss First Funds' ESI production.

9. On August 14, 2007, based on representations from Robert Matz that he would be [Case 6:06-cv-00082-LED-JDL Document 174 Filed 08/15/2007 Page 4 of 4](#) in New York from August 15-17, 2007, to review First Funds document productions, Floyd Walker, an attorney representing First Funds in this matter, flew from Austin to New York on the 5:08 p.m. CDT flight. According to our firm's travel agent, Mr. Walker's round trip ticket cost \$1,066.93, and his hotel reservations (which amounted to a three night stay) amounted to approximately \$499.00/night.

10. Mr. Walker landed in New York at approximately 9:00 p.m. CDT on August 14, 2007.

11. At approximately 9:18 p.m. CDT, on August 14, 2007, I received a call from Robert Matz informing me that he landed in New York but that he would not be inspecting the documents at First Funds' offices in New York from August 15-17, 2007. He told me that he would be catching the next flight back to California.

12. Exhibits A, C-P, R-X, and Z-AA to First Funds' Response to Plaintiff's Motion for Sanctions are true and correct copies of correspondence between the attorneys in this matter.

I declare under penalty of perjury that the foregoing is true and correct. This declaration is executed on August 15, 2007, in Austin, Texas.

/s/ Graham E. Sutliff
Graham E. Sutliff